

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: CS/SB 114

INTRODUCER: Environmental Preservation and Conservation Committee, Senator Justice and others

SUBJECT: Environmental Cleanup

DATE: March 20, 2009

REVISED: 03/24/09

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Kiger	EP	Fav/CS
2.	Wolfgang	Yeatman	CA	Fav/1 amendment
3.			ED	
4.			GA	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	<input checked="" type="checkbox"/>	Statement of Substantial Changes
B. AMENDMENTS.....	<input type="checkbox"/>	Technical amendments were recommended
	<input checked="" type="checkbox"/>	Amendments were recommended
	<input type="checkbox"/>	Significant amendments were recommended

I. Summary:

This bill expands the notification requirements for site contamination and creates a Petroleum Restoration Program Advisory Board.

This CS substantially amends s. 376.30702 and creates s. 376.30717 of the Florida Statutes.

II. Present Situation:

Notification of Contamination

Section 376.30702, F.S., provides that whenever contamination has been discovered beyond the property boundaries of the site being cleaned up according to risk-based corrective action (RBCA) provisions, the person responsible for site rehabilitation must give notice to the Division of Waste Management of the Department of Environmental Protection (DEP). Also, the person responsible for site rehabilitation must mail a copy of such notice to the appropriate DEP district office and county health department.

The notice shall include:

- The location of the property at which site rehabilitation was initiated and contact information for the person responsible for site rehabilitation;
- A listing of all record owners of any real property, other than the property at which site rehabilitation was initiated, at which contamination has been discovered; the parcel identification number for any such real property; the owner's address listed in the current county property tax office records; and the owner's telephone number;
- Separate tables, by medium, which list sampling locations; the sampling date; names of contaminants detected above cleanup target levels; their corresponding cleanup target levels; the contaminant concentrations; and whether the cleanup target level is based on health or nuisance, organoleptic,¹ or aesthetic concerns; and
- A vicinity map that shows the sampling locations with laboratory results and the date on which each sample was collected, and identifies the property boundaries of the property at which site rehabilitation was initiated, and any other property at which contamination has been discovered during such site rehabilitation.

DEP sends a copy of the notice to all record owners of any real property, other than the property at which site rehabilitation was initiated at which contamination has been discovered. This notification is only required to be provided for specific properties from which samples are collected and analyzed in a laboratory. Consequently, if samples are collected only from the property of the contaminated site under investigation, such as a road right-of-way rather than on private property, or if not all parcels in the vicinity of a contaminated site are sampled, then some people who may be affected by contamination may not be notified of its presence.

Sections 376.30701, 376.3071, 376.3078, and 376.81, F.S., authorize the department and persons responsible for contaminated site rehabilitation to use RBCA when cleaning up such sites. Each of these statutes requires notification of affected parties when DEP approves a cleanup plan that allows contamination to remain beyond the boundaries of the source property while cleanup is underway. These provisions are designed to facilitate early notification of the discovery of contamination. The DEP has rules designed to implement contamination clean-up.²

The Petroleum Restoration Program

Under the statutory authority given to the DEP under the Inland Protection Trust Fund, the DEP is directed to implement rules and procedures to improve the efficiency of the Petroleum Restoration Program. The DEP has a number of petroleum clean-up programs in place at present.³

Prior to Fiscal Year 2000-2001, the average closure rate was 156 sites per year. Since that time the average closure rate has been 307 sites per year. The DEP attributes this increase to the good

¹ Pertaining to or perceived by a sensory organ, *American Heritage Dictionary*, 2nd ed. 1985

² See, e.g. Petroleum Contamination Site Cleanup Criteria, 62-770.140, F.A.C.; 62-770.160, F.A.C.; Contaminated Site Cleanup Criteria, 62-780.110, F.A.C.; 62-780.680, F.A.C.; Brownfields Cleanup Criteria, 62-785.150, F.A.C; 62-785.680, F.A.C.

³ See generally Florida Department of Environmental Protection, Division of Waste Management, Bureau of Petroleum Storage Systems, Petroleum Contamination Cleanup and Discharge Prevention Programs, June 2008, available at http://www.dep.state.fl.us/waste/quick_topics/publications/pss/pcp/geninfo/2008ProgramFINAL060908.pdf; see, e.g., section 376.3072, F.S.

working relationship between the department and industry. The DEP strives to implement this program in a transparent manner whereby all affected parties can instantly track work orders, invoice processing, etc. The DEP uses internet and electronic document management help facilitate open and continuous communication.

III. Effect of Proposed Changes:

Section 1 amends section 376.30702, F.S., to expand the risk-based correction action provisions to include contamination that is discovered as a result of rehabilitation carried out pursuant to an administrative or court order. The CS also expands the parties that need to be notified to add the following:

- The mayor, chair of the county commission, or the comparable senior elected official representing the affected area;
- The city manager, county administrator, or the comparable senior elected official representing the affected area, both U.S. Senators and U.S. Representatives; and
- All property owners, lessees and tenants where site rehabilitation is being conducted, if different from the person responsible for site rehabilitation, *and* all property owners, lessees, and tenants of any properties within 1,000 foot radius of each sampling point at which contamination is discovered.

These additional notification requirements do not apply to contamination found due to petroleum cleanups administered by the Department of Environmental Protection using the Inland Protection Trust Fund pursuant to s. 376.3071, F.S., dry cleaning facility restoration pursuant to s. 376.3078, F.S., or brownfield area cleanup pursuant to s. 376.81, F.S.

Notice mailed to local government officials must include information advising local government of the local government's statutory notification responsibilities. Copies of the notices and receipts must be provided to the DEP so that DEP can verify compliance. The notice provided by responsible parties to property owners, lessees, and tenants may be delivered by certified mail, return receipt requested, hand delivery, or door hanger. Copies of the notices and receipts, or a copy of a sample of the hand-delivered notice or door-hanger and a list of addresses to which the notice or door-hanger was distributed, must be provided to DEP so the department can verify compliance.

Within 30 days of receiving notice, the local government must mail a copy of the notice to the president or comparable executive officer of each homeowners' association or neighborhood association within the potentially affected area. DEP must verify within 30 days of receiving the notice that the person responsible for the site rehabilitation has complied with the notice requirements. If the person responsible for site rehabilitation has not complied with the notice requirement, the DEP may pursue enforcement of those provisions using its existing enforcement authority.

Additionally, if the property at which contamination has been discovered is a school as defined in s. 1003.01, F.S., DEP is also required to send a notice to the school district superintendent and direct the superintendent to annually notify teachers and parents or the guardians of students attending the school. If the property at which contamination has been discovered is the site of a private K-12 school or a child care facility as defined in s. 402. 302, F.S., the department must

mail a copy of the notice to the governing board, principal, or owner of the school or child care facility. The DEP must direct the governing board, principal, or owner to provide actual notice annually to teachers and parents or guardians of children attending the school or child care facility during the time the site is being rehabilitated.

If a property within a one-mile radius of the contamination is a school as defined in section 1003.01, F.S., DEP is required to send a notice to the school district superintendent and direct the superintendent to provide actual notice annually to the principal of the school. This notification does not apply to contamination found due to petroleum cleanups administered by the Department of Environmental Protection using the Inland Protection Trust Fund pursuant to s. 376.3071, F.S., dry cleaning facility restoration pursuant to s. 376.3078, F.S., or brownfield area cleanup pursuant to s. 376.81, F.S.

Section 2 creates a Petroleum Restoration Program Advisory Board. The purpose of the board is to reduce the costs and increase site cleanups by 10 percent per year and achieve restoration of all sites in the program by 2025.

The Board will consist of seven members. The President of the Senate and the Speaker of the House of Representatives can appoint one member who possesses knowledge, skill, and experience in the area of geology or insurance. The secretary of DEP appoints five members, four of which will be nominated by the Florida Petroleum Marketers and Convenience Store Association and one member nominated by the Florida Petroleum Council. The members are appointed to staggered three year terms and may not be appointed for more than two consecutive terms. Board members may not be compensated for their service and are not entitled reimbursement for per diem and travel expenses. The board will annually elect from among its members a chair and a vice chair.

The board must meet at least four times a year. A majority of the members present constitute a quorum and a quorum is necessary for the board to take any official action. All meetings of the board must be open to the public. Semiannually, the secretary, or a designee, will be required to meet with the board to review DEP's procedures and rules as they relate to the owners and operators of petroleum contaminated sites and environmental contractors who receive work from the department for site rehabilitation (i.e., "the Petroleum Restoration Program"), statutory or rule hindrances to the program, funding strategies, program staffing hindrances to the program and other strategies to improve the quality and cost-effectiveness of the program. The board will also examine program productivity and efficiency with the goal of increasing the number of site-completion orders issued by 10 percent annually. The board is required to annually report to the Secretary of DEP and the Legislature on their progress on meeting the Board's goals.

Section 3 provides an effective date of July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Owners of contaminated property may be more vulnerable to lawsuits simply because of increased public awareness of the presence of contamination. Property owners will benefit from more information about the extent of contamination in their vicinity. However, if contamination does exist, or is presumed to exist, this may adversely affect their property's value.

C. Government Sector Impact:

According to the Department of Health, there are about 30,000 known contaminated properties in Florida. On average, within 1,000 feet of these contaminated properties are between 2 and 20 other properties. This could require notification of 60,000 and 600,000 property owners state-wide. If only 1% of property owners receiving notice inquire about the health threat, DOH could be responding to between 600 and 6,000 inquiries per year. Notification of private K-12 schools and child care facilities would increase the demand for health information even more. Two Environmental Specialist III employees could respond with basic information to about 16 inquires per day or 4,000 per year. Two employees would be expected to cost \$117,082 in salary, benefits, and training in the first year. The recurring cost is projected to be \$135,898.

According to DEP, there will be manageable startup costs to establish procedures for identifying parcels that fall within a 1,000 foot radius of a contamination location. DEP will incur significant costs to identify a large number of property owners each year. The Department of Health may experience an increase in resident requests for information on public health impacts of contamination on or near their residences and drinking water supplies. As most local governments own contaminated property, they may experience indeterminate costs associated with responding to resident inquiries about notices they receive from DEP. School districts will also experience increased costs for creating and mailing letters to teachers, parents, and guardians of schools within a one-mile radius of a contaminated site. These state agencies will incur an indeterminate number of expenditures to contractors tasked with identifying parcel owners, and generating and mailing notice letters.

The creation of the Petroleum Restoration Program Advisory Board does not fiscally impact DEP. The CS prohibits the members from receiving compensation for their services or reimbursement for per diem and travel expenses.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DEP argues that the basis for selecting an area around a contaminated site within which to notify the public should be based on empirical data about the size of a typical ground water contamination plume, including a safety factor to allow for an exceptionally large ground water plume.

It is DEP's position that a Petroleum Restoration Program Advisory Board is not needed. DEP already has a program in place that monitors clean-up programs. Further, the members who would be eligible to sit on the board are from the same pool of experts that can participate and profit from the clean-up programs in place now.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Protection and Conservation on March 10, 2009:

The bill expands the parties that need to be notified to include a list of state and health officials that represent the affected area and the state of Florida. It reduces the property radius range of persons that need to be notified when site rehabilitation is being conducted from one mile to 1,000 feet. Further, it exempts certain entities involved in existing clean-up programs from the noticing provisions. Finally, it creates a Petroleum Restoration Program Advisory Board that is charged with reducing costs and increasing site cleanups.

- B. **Amendments:**

Barcode 322414 by Community Affairs on March 24, 2009:

The amendment changes the word "within" to "at."